

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

WILMER B. GAY	:	CIVIL ACTION
	:	
v.	:	
	:	
ROBERT D. SHANNON; VINCENT	:	
MOONEY; MARY CANINO; JEFFREY	:	
A. BEARD; THOMAS L. JAMES;	:	
ROBERT S. BITNER; McCUSKER;	:	
DERRICK WADE; DONALD T. VAUGHN;	:	
WILLIAM FULMER; BERNIE CUDWODIE;	:	
ANTHONY L. PETRUCCIA; EDGAR M.	:	
KNEISS; CAROL M. DOTTER;	:	
SGT. MEYERS; LT. BRENNAN	:	NO. 02-4693

ORDER

AND NOW, this 21st day of December, 2005, upon consideration of Plaintiff's Motion for Reconsideration and Defendant Mooney's Response in Opposition to the Motion for Reconsideration , it appearing that:

- a. Plaintiff Wilmer Gay, pro se, a prisoner at the State Correctional Institution at Huntingdon, filed a complaint alleging constitutional violations and pendent state law claims against Pennsylvania government and prison officials (the "Commonwealth Defendants") and a fellow inmate, William Fulmer.
- b. The Commonwealth Defendants' motion to dismiss the complaint was granted on March 1, 2005 as to all Commonwealth Defendants except Major Vincent Mooney ("Mooney").
- c. On September 21, 2005, Plaintiff filed a Motion for Summary Judgment against Mooney and William Fulmer. Fulmer was not served with the motion. On 10/11/2005, Mooney filed a Cross-Motion for Summary Judgment.
- d. By Memorandum and Order filed November 23, 2005, this court: (1) granted Mooney's motion for summary judgment; (2) denied Gay's motion for summary judgment; and (3) granted summary judgment to Fulmer sua sponte.

- e. On December 7, 2005, Gay timely moved for reconsideration,¹ arguing the Memorandum and Order was the product of fraud upon the court because defense counsel conspired with the court's staff to issue a Memorandum and Order with a stamped signature without the authorization of the court.
- f. The stamped signature was affixed to the Memorandum and Order written by the court with the authorization of the court and without any involvement of defense counsel.
- g. No new evidence has come to light; the controlling law has not changed; and there is no need to correct clear error or prevent manifest injustice. See Harsco Corp. v. Zlotnicki, 779 F.2d 906, 909 (3d Cir. 1985) ("The purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence"); Haymond v. Lundy, 205 F. Supp. 2d 390, 395 (E.D. Pa. 2002) (courts will reconsider an issue only when: (1) there has been an intervening change in the controlling law; (2) new evidence has become available; or (3) there is a need to correct a clear error or prevent manifest injustice).

It is therefore **ORDERED** that:

1. Plaintiff's Motion for Reconsideration (Paper # 108) is **DENIED**.
2. The Clerk is instructed to mark this case **CLOSED**.

/s/ Norma L. Shapiro

S.J.

¹ Under the mailbox rule, the date of a pro se prisoner's filing is the date a prisoner delivers his filing to prison authorities for mailing. Houston v. Lack, 487 U.S. 266, 275, 108 S.Ct. 2379 (1988); Burns v. Morton, 134 F.3d 109 (3d Cir. 1998). Here, Gay's motion was dated December 7, 2005 and mailed December 8; both dates fall within ten days from the filing of the court's Order.